

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION VII

901 NORTH FIFTH STREET
KANSAS CITY, KANSAS 66101

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ENVIRONMENTAL PROTECTION
AGENCY-REGION VII
REGIONAL HEARING CLERK

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)

City of Hays Water Softening Plant)
1000 Vine Street)
Hays, Kansas 67601)

Docket No. CAA-07-2008-0020

Respondent)

CONSENT AGREEMENT AND FINAL ORDER

The United States Environmental Protection Agency (EPA), Region VII (Complainant) and City of Hays (Respondent) have agreed to a settlement of this action before the filing of a complaint, and thus this action is simultaneously commenced and concluded pursuant to Rules 22.13(b) and 22.18(b)(2) of the Consolidated Rules of Practice Governing the Administrative Assessment of Civil Penalties, Issuance of Compliance or Corrective Action Orders, and the Revocation, Termination or Suspension of Permits (Consolidated Rules), 40 C.F.R. §§ 22.13(b) and 22.18(b)(2).

FACTUAL ALLEGATIONS

Jurisdiction

1. This is an administrative action for the assessment of civil penalties instituted pursuant to Section 113(d) of the Clean Air Act, 42 U.S.C. § 7413(d).

2. This Consent Agreement and Final Order serves as notice that EPA has reason to believe that Respondent has violated the provisions governing Chemical Accident Prevention, and specifically the requirement to implement a risk management program as required by 40 C.F.R. Part 68 and Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and that Respondent is therefore in violation of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r). Furthermore, this Consent Agreement and Final Order serves as notice pursuant to Section 113(d)(2)(A) of the Act, 42 U.S.C. § 7413(d)(2)(A), of EPA's intent to issue an order assessing penalties for this violation.

Parties

3. The Complainant, by delegation from the Administrator of the EPA, and the Regional Administrator, EPA, Region VII, is the Director, Air and Waste Management Division, EPA, Region VII.

4. The Respondent is City of Hays d/b/a City of Hays Water Softening Plant. The facility located at located at 1000 Vine Street, Hays, Kansas is owned by Respondent and is used to treat the City of Hays' drinking water supply.

Statutory and Regulatory Requirements

5. On November 15, 1990, the President signed into law the Clean Air Act Amendments of 1990. The Amendments added Section 112(r) to the Clean Air Act, 42 U.S.C. § 7412(r), which requires the Administrator of EPA to, among other things, promulgate regulations in order to prevent accidental releases of certain regulated substances. Section 112(r)(3), 42 U.S.C. § 7412(r)(3) mandates the Administrator to promulgate a list of regulated substances, with threshold quantities, and defines the stationary sources that will be subject to the accident prevention regulations mandated by Section 112(r)(7). Specifically, Section 112(r)(7) requires the Administrator to promulgate regulations that address release prevention, detection, and correction requirements for these listed regulated substances, 42 U.S.C. § 7412(r)(7).

6. On June 20, 1996, EPA promulgated a final rule known as the Risk Management Program, 40 C.F.R. Part 68, which implements Section 112(r)(7), 42 U.S.C. § 7412(r)(7), of the Clean Air Act. These regulations require owners and operators of stationary sources to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

7. The regulations at 40 C.F.R. Part 68, set forth the requirements of a risk management program that must be established at each stationary source. The risk management program is described in a risk management plan (RMP) that must be submitted to EPA.

8. Pursuant to Section 112(r)(7) of the Clean Air Act, 42 U.S.C. § 7412(r)(7), and 40 C.F.R. § 68.150, the RMP must be submitted by an owner or operator of a stationary source that has more than a threshold quantity of a regulated substance in a process no later than the latter of June 21, 1999; or the date on which a regulated substance is first present above the threshold quantity in a process.

9. Section 113(b)(2) of the Clean Air Act, 42 U.S.C. § 7413(b)(2), authorizes the United States to commence an action to assess civil penalties of not more than \$25,000 per day for each violation of Section 112(r) of the Clean Air Act that occurs before January 30, 1997. Section 113(b)(2) of the Clean Air Act, 42 U.S.C. § 7413(b)(2), as amended by the Debt Collection Improvement Act of 1996, authorizes the United States to commence an action to assess civil

penalties of not more than \$27,500 per day for each violation that occurs after January 30, 1997, through March 15, 2004; and \$32,500 per day for each violation that occurs after March 15, 2004.

Definitions

10. The regulations at 40 C.F.R. § 68.3 define “stationary source” in part, as any buildings, structures, equipment, installations, or substance emitting stationary activities which belong to the same industrial group, which are located on one or more contiguous properties, which are under the control of the same person (or persons under common control) and from which an accidental release may occur.

11. The regulations at 40 C.F.R. § 68.3 define “threshold quantity” as the quantity specified for regulated substances pursuant to Section 112(r)(5) of the Clean Air Act, as amended, listed in 40 C.F.R. § 68.130, Table 1, and determined to be present at a stationary source as specified in 40 C.F.R. § 68.115.

12. The regulations at 40 C.F.R. § 68.3 define “regulated substance” as any substance listed pursuant to Section 112(r)(3) of the Clean Air Act, as amended, in 40 C.F.R. § 68.130.

13. The regulations at 40 C.F.R. § 68.3 define “process” as any activity involving a regulated substance including any use, storage, manufacturing, handling, or on-site movement of such substances, or combination of these activities. For the purposes of this definition, any group of vessels that are interconnected, or separate vessels that are located such that a regulated substance could be involved in a potential release, shall be considered a single process.

Alleged Violations

14. EPA alleges that Respondent has violated the Clean Air Act and federal regulations, promulgated pursuant to the Clean Air Act, as follows:

15. Respondent is, and at all times referred to herein, was a “person” as defined by Section 302(e) of the Clean Air Act, 42 U.S.C. § 7602(e).

16. Respondent’s facility located at 1000 Vine Street, Hays, Kansas, is a “stationary source” pursuant to 40 C.F.R. § 68.3.

17. Chlorine is a regulated substance pursuant to 40 C.F.R. § 68.3. The threshold quantity for chlorine, as listed in 40 C.F.R. § 68.130, Table 1, is 2,500 pounds.

18. On or about July 26, 2006, EPA conducted an inspection of Respondent’s facility to determine compliance with Section 112(r) of the Clean Air Act and 40 C.F.R. Part 68.

19. Records collected during and following the inspection showed that Respondent has exceeded the threshold quantity for chlorine.

20. Respondent is subject to the requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, Subpart G, because it is an owner and operator of a stationary source that had more than a threshold quantity of a regulated substance in a process.

21. Respondent was required under Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and 40 C.F.R. Part 68, to develop and implement a risk management program that includes a hazard assessment, a prevention program, and an emergency response program.

22. Records collected during the EPA inspection showed that Respondent failed to fully implement a risk management program that included all the requirements of a prevention program as required by 40 C.F.R. Part 68. Specifically, Respondent failed to: (1) develop a management system as required by 40 C.F.R. § 68.15; (2) maintain documentation supporting their offsite consequence analyses as required by 40 C.F.R. § 68.39; (3) compile the required safety information as required by 40 C.F.R. § 68.48(a)(1) and (a)(5); (4) document results of a review of the hazards associated with the regulated substances, processes, and procedures as required by 40 C.F.R. § 68.50; (5) prepare written operating procedures that provide clear instructions or steps for safely conducting activities associated with each covered process as required by 40 C.F.R. § 68.52; (6) prepare and implement procedures for ensuring mechanical integrity as required by 40 C.F.R. § 68.56; (7) certify that they have evaluated compliance with the provisions of 40 C.F.R. Part 68, Subpart C at least every three years as required by 40 C.F.R. § 68.58; and (8) update the emergency contact information within thirty days of the change as required by 40 C.F.R. § 68.195.

23. Respondent's failure to comply with 40 C.F.R. Part 68, as set forth above are all violations of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r).

CONSENT AGREEMENT

24. Respondent and EPA agree to the terms of this Consent Agreement and Final Order and Respondent agrees to comply with the terms of the Final Order portion of this Consent Agreement and Final Order.

25. For purposes of this proceeding, Respondent admits the jurisdictional allegations set forth above and agrees not to contest EPA's jurisdiction in this proceeding or any subsequent proceeding to enforce the terms of the Final Order portion of this Consent Agreement and Final Order.

26. Respondent neither admits nor denies the factual allegations set forth above.

27. Respondent waives its right to a judicial or administrative hearing on any issue of fact or law set forth above and its right to appeal the Final Order portion of this Consent Agreement and Final Order.

28. Respondent and EPA agree to conciliate this matter without the necessity of a formal hearing and to bear their respective costs and attorney's fees incurred as a result of this action.

29. This Consent Agreement and Final Order addresses all civil and administrative claims for the Clean Air Act violations identified above, existing through the effective date of this Consent Agreement and Final Order. Complainant reserves the right to take any enforcement action with respect to any other violations of the Clean Air Act or other applicable law.

30. Respondent certifies by the signing of this Consent Agreement and Final Order that to the best of its knowledge, Respondent's facility is presently in compliance with all requirements of Section 112(r) of the Clean Air Act, 42 U.S.C. § 7412(r), and all regulations promulgated thereunder.

31. The effect of settlement described in paragraph 29 is conditional upon the accuracy of the Respondent's representations to EPA, as memorialized in paragraph 30, above, of this Consent Agreement and Final Order.

32. The undersigned representative of Respondent certifies that he or she is fully authorized to enter the terms and conditions of this Consent Agreement and Final Order and to execute and legally bind Respondent to it.

33. Pursuant to Section 113(e) of the Clean Air Act, the nature of the violations, Respondent's agreement to perform a Supplemental Environmental Project (SEP) and other relevant factors, EPA has determined that an appropriate civil penalty to settle this action is in the amount of Four Thousand Two Hundred Thirty Dollars (\$4,230).

34. The penalty specified in paragraph 33, above, shall represent civil penalties assessed by EPA and shall not be deductible for purposes of Federal taxes.

35. Respondent consents to the issuance of this Consent Agreement and consents for the purposes of settlement to the payment of the civil penalty cited in paragraph 33, above, and to the performance of the Supplemental Environmental Project.

36. In settlement of this matter, Respondent agrees to complete the following Supplemental Environmental Project (SEP), which the parties agree is intended to secure significant environmental and/or public health benefits.

37. Respondent shall complete the SEP as follows: purchase a laptop computer, printer and pelican case for the City's Hazmat team. The SEP is more specifically described in the scope of work (hereinafter the "Scope of Work"), attached hereto as Appendix A and incorporated herein by reference. All work required to complete the SEP shall be performed in compliance with all federal, state, and local laws and regulations.

38. The total expenditure for the SEP is estimated to be \$1,827 and the SEP shall be completed no later than sixty (60) days after the effective date of this Consent Agreement and Final Order, in accordance with the specifications set forth in the Scope of Work. Respondent shall include documentation of the expenditures made in connection with the SEP as part of the SEP completion report.

39. Respondent certifies that it is not required to perform or develop the SEP by any federal, state, or local law or regulation; nor is Respondent required to perform or develop the SEP by agreement, grant, or as injunctive relief in this or any other case or to comply with state or local requirements. Respondent further certifies that Respondent has not received, and is not presently negotiating to receive, credit in any other enforcement action for the SEP.

40. For federal income tax purposes, Respondent agrees that it will neither capitalize into inventory or basis nor deduct any costs or expenditures incurred in performing the SEP.

41. Within sixty (60) days of completion of the SEP, Respondent shall submit a SEP Completion Report to EPA. The SEP Completion Report shall contain the following:

- (i) A detailed description of the SEP as implemented;
- (ii) Itemized costs;
- (iii) A description of any operating problems encountered and the solutions thereto;
- (iv) A certification that the SEP has been fully implemented pursuant to the provisions of this Consent Agreement and Final Order; and
- (v) A description of the environmental and public health benefits resulting from implementation of the SEP (with quantification of the benefits and pollutant reductions, if feasible).
- (vi) The report shall be submitted via first class mail to:
George Hess
ARTD/CRIB
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101.

42. In itemizing its costs in the SEP Completion Report, Respondent shall clearly identify and provide acceptable documentation for all eligible SEP costs. Where the SEP Completion Report includes costs not eligible for SEP credit, those costs must be clearly identified as such. For purposes of this paragraph, "acceptable documentation" includes invoices, purchase orders, or other documentation that specifically identifies and itemizes the

individual costs of the goods and/or services for which payment is being made. Canceled drafts do not constitute acceptable documentation unless such drafts specifically identify and itemize the individual costs of the goods and/or services for which payment is being made.

43. After receipt of the SEP Completion Report described in paragraph 41, above, EPA will notify Respondent, in writing, regarding:

- (i) any deficiencies in the SEP report itself along with a grant of an additional thirty (30) days for Respondent to correct any deficiencies; or
- (ii) indicate that EPA concludes that the project has been completed satisfactorily; or
- (iii) determine that the project has not been completed satisfactorily and seek stipulated penalties in accordance with paragraph 45 herein.

If EPA elects to exercise option (i) above, i.e., if the SEP report is determined to be deficient, but EPA has not yet made a final determination about the adequacy of SEP completion itself, EPA shall permit Respondent the opportunity to object in writing to the notification of deficiency given pursuant to this paragraph within ten (10) days from the receipt of such notification. EPA and Respondent shall have an additional thirty (30) days from the receipt by EPA of the notification of objection to reach agreement on changes necessary to the SEP report. If agreement cannot be reached on any such issue within this thirty (30) day period, EPA shall provide a written statement of its decision on adequacy of the completion of the SEP to Respondent, which decision shall be final and binding upon Respondent. Respondent agrees to comply with any requirements imposed by EPA as a result of any failure to comply with the terms of this Consent Agreement and Final Order. In the event the SEP is not completed as contemplated herein, as determined by EPA, stipulated penalties shall be due and payable by Respondent to EPA in accordance with paragraph 45 herein.

44. Respondent agrees that failure to submit the SEP Completion Report required by paragraph 41 above, shall be deemed a violation of this Consent Agreement and Final Order and Respondent shall become liable for stipulated penalties pursuant to paragraph 45 below.

45. Stipulated Penalties

a) In the event that Respondent fails to comply with any of the terms or provisions of this Agreement relating to the performance of the SEP described in paragraph 37 above, and/or to the extent that actual expenditures for the SEP do not equal or exceed the cost of the SEP described in paragraph 38 above, Respondent shall be liable for stipulated penalties according to the provisions set forth below:

- (i) Except as provided in subparagraph (ii) immediately below, for a SEP which has not been completed satisfactorily pursuant to this Consent Agreement and Final Order, Respondent shall pay a stipulated penalty to the United States in the amount of \$1,370.
- (ii) If the SEP is not completed in accordance with paragraph 37, but the Complainant determines that the Respondent: a) made good faith and timely efforts to complete the project; and b) certifies, with supporting

documentation, that at least 90 percent of the amount of money which was required to be spent was expended on the SEP, Respondent shall not be liable for any stipulated penalty.

- (iii) If the SEP is completed in accordance with paragraph 37, but the Respondent spent less than 90 percent of the amount of money required to be spent for the project, Respondent shall pay a stipulated penalty to the United States in the amount of \$250.
- (iv) If the SEP is completed in accordance with paragraph 37, and the Respondent spent at least 90 percent of the amount of money required to be spent for the project, Respondent shall not be liable for any stipulated penalty.
- (v) For failure to submit the SEP Completion Report required by paragraph 41 above, Respondent shall pay a stipulated penalty in the amount of \$50 for each day after the due date of the Completion Report stated in paragraph 41 above, until the report is submitted.

b) The determinations of whether the SEP has been satisfactorily completed and whether the Respondent has made a good faith, timely effort to implement the SEP shall be in the sole discretion of EPA.

c) Stipulated penalties for paragraph (v) above shall begin to accrue on the day after performance is due, and shall continue to accrue through the final day of the completion of the activity.

d) Respondent shall pay stipulated penalties not more than fifteen (15) days after receipt of written demand by EPA for such penalties. Method of payment shall be in accordance with the provisions of paragraph 1 below. Interest and late charges shall be paid as stated in paragraph 47 herein.

46. Respondent understands that the failure to pay any portion of the mitigated civil penalty as stated in paragraph 33, or any portion of a stipulated penalty as stated in paragraph 45, in accordance with the provisions of this order may result in commencement of a civil action in Federal District Court to recover the total penalty, together with interest at the applicable statutory rate.

47. Pursuant to 31 U.S.C. §3717, EPA is entitled to assess interest and penalties on debts owed to the United States and charge to cover the costs of processing and handling delinquent claims. Interest will therefore begin to accrue on a civil or stipulated penalty if it is not paid by the last date required. Interest will be assessed at the rate of the United States tax and loan rate in accordance with 31 C.F.R. § 901.9(b). A charge will be assessed to cover the debt collection, including processing and handling costs and administrative costs. In addition, a non-payment penalty charge of six (6) percent per year compounded annually will be assessed on any portion of the debt which remains delinquent more than ninety (90) days after payment is due. Any such

non-payment penalty charge on the debt will accrue from the date the penalty becomes due and is not paid, 31 C.F.R. §§ 901.9(c) and (d).

48. Any public statement, oral or written, in print, film, or other media, made by Respondent making reference to the SEP shall include the following language: "This project was undertaken in connection with the settlement of an enforcement action taken by the United States Environmental Protection Agency."

49. This Consent Agreement and Final Order shall not relieve Respondent of its obligation to comply with all applicable federal, state, and local laws, nor shall it be construed to be a ruling on, or determination of, any issue related to any federal, state, or local permit, nor shall it be construed to constitute EPA approval of the equipment or technology installed by Respondent in connection with the SEP undertaken pursuant to this Agreement.

50. This Final Order portion of this Consent Agreement and Final Order shall apply to and be binding upon Respondent, and Respondent's agents, successors, and/or assigns. Respondent shall ensure that all contractors, employees, consultants, firms, or other persons or entities acting for Respondent with respect to matters included herein comply with the terms of this Consent Agreement and Final Order.

FINAL ORDER

Pursuant to the provisions of the Clean Air Act, 42 U.S.C. § 7401, and based upon the information set forth in this Consent Agreement, IT IS HEREBY ORDERED THAT:

1. Respondent shall pay a civil penalty of Four Thousand Two Hundred Thirty Dollars (\$4,230) within thirty (30) days of entry of this Final Order. Payment shall be by cashier's or certified check made payable to the "United States Treasury" and shall be remitted to:

U.S. Environmental Protection Agency
Fines and Penalties
Cincinnati Finance Center
P.O. Box 979077
St. Louis, MO 63197-9000

This payment shall reference docket number CAA-07-2008-0020.

2. A copy of each check shall be sent to:

Regional Hearing Clerk
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101

and to:

Sarah LaBoda
Assistant Regional Counsel
United States Environmental Protection Agency - Region VII
901 N. Fifth Street
Kansas City, Kansas 66101.

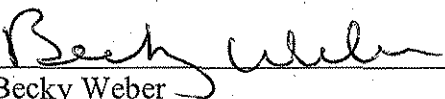
3. Respondent shall complete the Supplemental Environmental Project in accordance with the provisions set forth in the Consent Agreement and shall be liable for any stipulated penalty for failure to complete such a project as specified in the Consent Agreement.

4. This executed Consent Agreement and Final Order shall be returned to the Regional Hearing Clerk, U.S. Environmental Protection Agency, 901 North 5th Street, Kansas City, Kansas 66101.

COMPLAINANT:
UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY

By 
Sarah Thibos LaBoda
Assistant Regional Counsel

Date 4/14/08

By 
Becky Weber
Director
Air and Waste Management Division

Date 4/16/08

RESPONDENT:
CITY OF HAYS, KANSAS
HAYS WATER SOFTENING PLANT

By Brandi Hurman

Title Director of Public Works

Date 4-11-08

IT IS SO ORDERED. This Final Order shall become effective immediately.

Karina Borromeo

Karina Borromeo
Regional Judicial Officer

Date May 7, 2008

APPENDIX A

SUPPLEMENTAL ENVIRONMENTAL PROJECT – SCOPE OF WORK

In satisfaction of its obligations under this Consent Agreement and Final Order ("CAFO"), the CITY OF HAYS, KS will complete the supplemental environmental project ("SEP") listed below. A SEP is an environmentally beneficial project that a respondent agrees to undertake in settlement of an enforcement action, but one which the respondent is not otherwise legally required to perform, and that primarily benefits the public health or the environment. EPA has approved the following SEP, in addition to the administrative penalty set forth in this CAFO, for the settlement of this matter.

- 1) The SEP project described below is designed to allow the CITY'S Hazmat Team to have a Dell laptop computer, printer, and carrying case on-board the Hazmat truck for access to chemical make-up prior to entry into an affected zone. This will reduce the risk to Hazmat Team members as well as reduce risk to the general public.

Equipment Proposed:

Dell Laptop Model Inspiron 1525
Intel Pentium® Dual Core T2330 (1.60 GHz/533Mhz FSB/1MB cache)
Dell All-in-One Printer Model 948
Pelican Carrying Case with Foam Inserts

- 2) The CITY OF HAYS agrees to download computer software (Cameo, Aloha and Marplot) onto the laptop from the EPA website for use in the field. The implementation of this SEP project is estimated to result in a CITY OF HAYS expenditure of \$1,827. This amount includes a carrying case for the laptop and printer. This SEP is a hazardous material safety project that allows Hazmat Team members to view and print chemical information prior to entry into an affected area.
- 3) The implementation of the SEP project described in paragraph 2 of this Appendix is estimated to result in a total CITY OF HAYS expenditure of \$1,827. EPA agrees that CITY OF HAYS will have fulfilled its obligations under this CAFO related to the SEP, if (i) the SEP is completed, as described herein, and (ii) actual costs incurred by CITY OF HAYS (including equipment and installation costs), are 90 percent or more of the estimated expenditures for the implementation of this SEP, based upon the cost documentation in the SEP Final Report required in paragraph 5 below.
- 4) CITY OF HAYS shall order the equipment described in this Appendix A within 14 days of the effective date of this CAFO. The vendor has agreed to deliver the equipment within 45 days of order placement from CITY OF HAYS. CITY OF HAYS shall install the equipment within 10 days from the receipt of the equipment to complete the SEP described this Appendix. CITY OF HAYS will complete the SEP within 60 days of the effective date of the CAFO.
- 5) Within 60 days from the completion of the implementation of the SEP described in this Appendix A, CITY OF HAYS will submit to EPA a Final SEP Report. This Final SEP Report shall provide a detailed description of the SEP as implemented, including dates of completion of the SEP. The report shall also document all approved costs incurred in the purchase, installation, and operation of the SEP.

IN THE MATTER OF City of Hays Water Softening Plant, Respondent
Docket No. CAA-07-2008-0020

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing Consent Agreement and Final Order was sent this day in the following manner to the addressees:

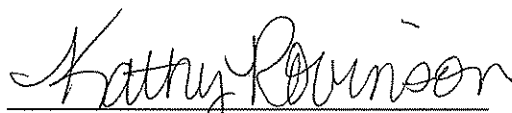
Copy hand delivered to
Attorney for Complainant:

Sarah Thibos LaBoda
Assistant Regional Counsel
Region VII
United States Environmental Protection Agency
901 N. 5th Street
Kansas City, Kansas 66101

Original by Certified Mail Return Receipt to:

Ms. Brenda G. Herrman
Director of Public Works
City of Hays, Public Works Department
1002 Vine Street
Hays, Kansas 67601

Dated: 5/9/08


Kathy Robinson
Hearing Clerk, Region 7